

**WHITLEY COUNTY BOARD OF ZONING APPEALS
STAFF REPORT**

19-W-VAR-4 DEVELOPMENT STANDARDS VARIANCE
Robert Myers
4087 W 800 North

MAY 28, 2019
AGENDA ITEM: 1

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural
Property area: 3.23± acres

The petitioner is requesting a development standards variance to permit the creation of a parcel without frontage onto a public road on his property at 4087 West 800 North. The property is located near the west end of County Road 800 North, roughly 3,000' west of CR 350 West.

The petitioner currently owns two adjacent parcels, neither of which has road frontage. The northern parcel had frontage on 800N until the county road was vacated sometime in the 70s or 80s (research was not done to determine the exact date). It appears that at the time of vacation, the road was truncated about 150' east of the petitioner's current property line on the adjacent parcel, although the petitioner seems to have owned the both tracts at the time.

The splitting of the petitioner's parcel in 1995 into the current configuration predated the code requirement for road frontage. This allowed the construction of the petitioner's dwelling on the subject property in 1996.

The petitioner now desires to sell the dwelling by itself while retaining the surrounding undeveloped land, including a sizeable wetland to the north of the proposed parcel, which would create the proposed landlocked parcel. An access easement would be granted following the existing driveway. No platting is necessary for this split given the configuration of the proposed parcel and preceding splits from the parent parcels.

REVIEW CRITERIA

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

The proposed variance could be injurious to the public health, safety, and general welfare as landlocked parcels may over time become less accessible for public services such as emergency agencies or utilities. Since they are not ensured access to a public road, and surrounding properties may encroach more easily, landlocked parcels also can suffer from loss of adequate light, air, and convenience of access, as stated in §1.4 as a purpose of the Zoning Code.

However, given the size of the parcel of 3.23 acres and the provision of an access easement, these factors could be mitigated. The Board should determine if this is sufficient to support this criterion.

The proposal would not be injurious to public morals.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

It is not expected that this variance will adversely affect the use and value of the area adjacent to the property as there are no changes to improvements proposed or otherwise permissible that would not be permissible currently.

3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.

The loss of a public road frontage by the historic vacation of the county road is a practical difficulty. The petitioner voluntarily gave up what frontage remained when splitting the property in 1995, although such a loss of frontage was permissible under the zoning code in effect at the time. At the present, the parcels are “lots of record,” legally nonconforming upon the adoption of the current zoning code in 2006. Such lots typically do present difficulties that warrant variance consideration; the Board must determine if this proposal is such a typical difficulty or if it arises from the petitioner’s proposal of something atypical and therefore is a self-imposition.

Date report prepared: May 20, 2019.

BOARD OF ZONING APPEALS ACTION

Motion:

By:

Second by:

Vote: Deckard Denihan Lopez Wilkinson Wright

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|----------------|--|--|--|--|--|
| <i>Yes</i> | | | | | |
| <i>No</i> | | | | | |
| <i>Abstain</i> | | | | | |